

EXHIBIT C

Todd L. Greenberg

October 25, 2012

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. CR11-228JLR
)	
ABU KHALID ABDUL-LATIF,)	
)	
Defendant.)	

Interview
of
TODD L. GREENBERG

Taken at 700 Stewart Street
Seattle, Washington

DATE: Thursday, October 25, 2012

REPORTED BY: Kristin M. Vickery, CCR, 3125

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Todd L. Greenberg

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No Exhibits Marked.

1 SEATTLE, WASHINGTON; THURSDAY, OCTOBER 25, 2012

2 1:04 P.M.

3 --o0o--

4

5 E X A M I N A T I O N

6 BY MS. WELLMAN:

7 Q. Why don't we start? In your August 3 letter, you
8 had mentioned a reference to a June 6 meeting with respect
9 to this case. What time was that meeting held?

10 A. 10 a.m.

11 Q. Okay. When did you first become involved in the
12 investigation?

13 A. Probably at that meeting. The first contact I had
14 about it was over the -- that was a Monday, June 6. And
15 over the weekend I had a couple e-mails to set that meeting
16 up. But that was -- that meeting was the very first meeting
17 between SPD and FBI on this case.

18 Q. Okay. And who were the -- who were the FBI
19 contacts in that -- for that meeting, setting it up? When
20 you set -- how did it first come to your attention?

21 A. Sean Moore who is the -- one of the supervisors at
22 the JTTF e-mailed me over the weekend asking if I was
23 available for a meeting Monday at ten.

24 Q. (BY MS. WELLMAN) Okay. And did he tell you what
25 the meeting was about?

1 A. Very vaguely. It had something to do with an SPD
2 investigation into a Fort-Hood-style attack.

3 Q. Okay.

4 A. That was it.

5 Q. And was Mike Dion involved in that meeting as well
6 or no?

7 A. No.

8 Q. Okay.

9 A. He was not there.

10 Q. Okay. And did you know who was going to be at
11 that meeting from SPD?

12 A. Nope.

13 Q. Did you know who was going to be in the meeting
14 from FBI?

15 A. No. I assumed Sean would.

16 Q. Okay.

17 A. But, no, I had no -- no idea.

18 Q. Okay. And is that meeting the same meeting where
19 Via and Tomlinson are -- and DeJesus are meeting with
20 Childs, or is it a different meeting on that same day?

21 A. It was a different meeting.

22 Q. Different meeting.

23 So had the meeting --

24 A. I don't know if they met with -- I can't recall
25 right now if they met with Childs that same day.

1 Q. Okay.

2 A. Childs was not at this meeting.

3 Q. Okay. When did you first learn that Childs was
4 the informant in this case?

5 A. I don't know what you mean by that.

6 Q. Did you know at that meeting that they were
7 working with Childs?

8 A. What his name was, or...?

9 Q. Anything about the informant that they were
10 working with.

11 A. There -- I believe there was some discussion about
12 the informant at this meeting. But I don't recall what it
13 was.

14 Q. Okay.

15 A. I recall being told that this person was not an
16 informant before this investigation started. In other
17 words, he came in kind of off the street, not as an
18 informant. I don't remember what else was discussed about
19 him at that time, at that meeting, that first meeting.

20 Q. Okay. Okay. And apologies if I already asked
21 this, DeJesus was at that meeting, at the -- on the June 6
22 meeting?

23 A. June 6?

24 MR. WESTINGHOUSE: Which meeting?

25 MS. WELLMAN: June 6.

1 MR. WESTINGHOUSE: You're referring to the 10 a.m.
2 meeting?

3 THE WITNESS: At 10 a.m.

4 MS. WELLMAN: The 10 a.m. meeting that Todd was
5 at.

6 A. Yes.

7 Q. (BY MS. WELLMAN) Okay. So DeJesus was there?

8 A. Yes.

9 Q. And what did you understand DeJesus' role was in
10 that meeting -- or in the investigation so far?

11 A. Well, can you ask those questions individually?

12 Q. Sure. So DeJesus was at the June 10, 10 a.m.
13 meeting.

14 A. June 6, yes.

15 Q. June 6 at 10 a.m.

16 A. Yes.

17 Q. Okay. And so what was your understanding of
18 DeJesus' role at that point in the investigation?

19 A. Well, at the meeting I came to learn that he had
20 been contacted by the informant a few days earlier about
21 what later became the investigation that we're here to talk
22 about, and that he had worked with the informant for a
23 couple days and was now bringing the case to present it,
24 essentially, to the FBI.

25 Q. Okay. Did DeJesus call Via to set up -- to bring

1 it to the attention of the FBI or who did he -- who did
2 he --

3 MR. WESTINGHOUSE: Do you have any knowledge about
4 that.

5 A. I don't know.

6 Q. (BY MS. WELLMAN) You don't know?

7 A. No.

8 Q. Okay. Do you have any knowledge of who DeJesus
9 contacted at the FBI, whether it was Via or someone else?

10 A. I don't.

11 Q. Okay. Are there any rough notes from that meeting
12 with DeJesus that haven't already been produced?

13 A. I didn't take notes at that meeting.

14 Q. Okay. This is more of a discovery issue in terms
15 of -- that I think we don't need to discuss today, but I was
16 going to -- in terms of witness logs, do you -- are either
17 you or Mike maintaining witness logs with respect to any
18 conversations or interviews of DeJesus?

19 MR. WESTINGHOUSE: Well, Jennifer, if we could
20 simply put the discovery aside, perhaps we could discover
21 that at a different -- discuss that at a different point.

22 But let's, today, focus only on the issue of the
23 text messaging and what directions were given by

24 Mr. Greenberg, what directions were given by Mr. Dion.

25 MS. WELLMAN: Okay.

1 Q. (BY MS. WELLMAN) Did you ever talk to DeJesus
2 directly about how Childs was performing as an informant?

3 A. I don't know what you mean by that.

4 Q. Did you ever talk to DeJesus about Childs?

5 A. Of course.

6 Q. How many times?

7 A. I have no idea.

8 Q. Throughout the investigation?

9 A. You mean from the day I met Sam DeJesus til
10 today --

11 Q. Would you -- would you talk --

12 A. -- have I ever talked to him about Robert Childs?

13 Q. Mm-hmm.

14 A. Of course.

15 Q. And about what he was doing on the investigation
16 or how he was -- let's say -- let's take between June 6 and
17 June 22, did you ever debrief with DeJesus about how Childs
18 did or did not conduct himself during the sting operation?

19 MR. WESTINGHOUSE: I'm going to, again, interrupt.
20 I'm sorry. I want you to have the opportunity to talk with
21 both witnesses as much as you need to about the subject of
22 the texting. But this isn't the time or the place to have a
23 more general discussion about this office's interaction with
24 the informant or Detective DeJesus and his relationship with
25 the informant. That's not the purpose.

1 MS. WELLMAN: Well, I -- can I call you Bob even
2 though we are being recorded, or do you want me to call you
3 Mr. Westinghouse?

4 MR. WESTINGHOUSE: Whatever.

5 MS. WELLMAN: The problem is is the scope of the
6 motion is not as narrowly defined as in that Paragraph 4 of
7 the August letter that -- that I think you would like us to
8 limit this to. The questions concern the control over the
9 investigation, what DeJesus' role was in the investigation,
10 and what knowledge Todd and Mike had with respect to the
11 text messaging.

12 So I'll try to -- you know, I've -- we've all
13 tried to keep in mind the scope of the issue before the --
14 before the Court as opposed to the trial. But --

15 MR. WESTINGHOUSE: I understand. And you can
16 argue whatever you want, but in terms of the firsthand
17 knowledge of these witnesses, it needs to be limited to the
18 subject matter of the motion which is the text messaging and
19 their directions to Detective DeJesus.

20 Q. (BY MS. WELLMAN) Okay. When did you first talk
21 to Detective DeJesus about this case? Is that June 6?

22 A. Yes.

23 Q. Okay. And have you worked on other cases with
24 him?

25 A. I -- I have encountered him in other cases. We

1 didn't work a case together like a detective or case agent
2 and an AUSA. But we've encountered each other in other
3 cases prior to this, prior to June 6.

4 Q. Okay. So by "encounterer," do you mean he was a
5 witness in -- or a law enforcement officer in another case?

6 A. Yeah. He's been a witness. Although, I don't
7 think he testified for me in a case. I think he's had
8 supporting roles in other investigations I've worked with,
9 in terms of me doing surveillance or something like that.

10 Q. Has he handled informants before for you?

11 A. No, he's not. No.

12 Q. Okay. Okay. So there's a July 25 letter that I
13 believe you signed where you -- you recall telling DeJesus
14 and other law enforcement to preserve their texts.

15 Do you recall when you first gave Detective
16 DeJesus that directive?

17 A. It was at the June 6 meeting.

18 Q. Okay.

19 A. 10 a.m.

20 Q. And what other times do you remember giving him
21 that directive?

22 A. I don't recall. I think, as we state in the
23 letter, I don't have a specific recollection of another time
24 where I said, Save text messages involving Robert Childs,
25 when DeJesus was present. There may very well have been

1 other times where that happened because it was a topic that
2 came up from time to time with the investigative team.

3 Q. Okay. Okay.

4 A. But I don't have a specific recollection of
5 another occasion.

6 Q. Okay.

7 A. I have a very specific recollection of the June 6
8 meeting.

9 Q. Okay. Do you recall who else you've given that
10 directive to on that law enforcement team?

11 A. I know I've given that directive to Ethan Via and
12 Al Kelly, special agents with the FBI.

13 Q. Okay. Did you ever discuss directly with
14 Detective DeJesus how to handle or communicate with Childs?

15 A. What do you mean how to? Like methods of
16 communication?

17 Q. Mm-hmm.

18 A. Well, why don't you ask me what you mean?

19 Q. That's exactly what I mean. Did you ever talk to
20 Detective DeJesus about how -- by what means he should
21 communicate with Childs?

22 A. Not -- I did not give him advice in terms of how
23 he should communicate with Robert Childs, no.

24 Q. Okay. Did he -- did you know he was communicating
25 by text messaging or e-mail?

1 A. I think -- yes. I must have thought that it was
2 at least a very good possibility because it was consistently
3 on my mind to have all the texts between agents and
4 detectives and Childs saved, so...

5 Q. Okay.

6 A. Yeah.

7 Q. Was there anyone else communicating with Childs by
8 text messaging or e-mail other than Detective DeJesus?

9 A. Well, we've produced to you texts between FBI
10 agents and Robert Childs, so obviously they were
11 communicating with Robert Childs by text to some extent.

12 Q. Okay.

13 MS. WELLMAN: Do you have a question?

14 MR. LEVIN: Yeah.

15

16 E X A M I N A T I O N

17 BY MR. LEVIN:

18 Q. In your letter -- let me just go back to who was
19 at the meeting. I think in your letter you indicate that
20 Specific Agent Via, Special Agent Sean Moore, SPD Sergeant
21 Allen and Detective DeJesus were at that meeting along with
22 you; is that right?

23 A. Correct.

24 Q. And --

25 A. And there were other people present as well.

1 Q. Well, you indicate that Special Agent Kelly may
2 have been present, but you weren't sure at the time you
3 wrote the letter. Since that time have you determined
4 whether he was there or not?

5 A. I have not determined that. I haven't asked him
6 or anyone else. I'm going off of my independent
7 recollection. I just don't remember if he was there or not.

8 Q. Okay. Who else was there?

9 A. Those are the people that I know for sure were
10 there. I would estimate there were, a good, other five or
11 six people. And I just don't remember who they were.

12 Q. Do you have any idea where they were from, whether
13 they were associated with the FBI or the Seattle police?

14 A. I don't. I mean, I really don't know for sure.
15 My best recollection is that there were probably one or two
16 other people with FBI there. There may have been, although
17 I don't remember specifically if anyone else was from SPD.
18 And there was someone who had -- was some sort of a criminal
19 investigator with one of the military branches. I don't
20 remember who it was or what it was. But I remember it being
21 someone of that ilk that was present.

22 Q. You say that one of the issues that was discussed
23 was the preservation of texts and e-mail communications.
24 Was that the only thing that was discussed?

25 A. No. Well, I mean -- maybe can I take a couple

1 minutes to describe the meeting for you so you --

2 Q. Sure.

3 A. This was about a 90-minute meeting. And like I
4 said, it was the first -- this was the first time SPD
5 presented this situation to FBI and to me. We were at a
6 pretty big conference table. This was at the FBI. There
7 were, like I said, maybe 12 people there, give or take. And
8 there were many things discussed at this meeting.

9 It was essentially started out with the
10 SPD -- with Sam DeJesus and Erik Allen, sort of briefing the
11 rest of us about what had been going on in the last few days
12 in terms of their investigation. And there was a lot of
13 discussion about Abdul-Latif and what was known about him
14 and what had been going on, you know, in the last few days
15 with him. There was a lot of discussion about investigative
16 strategies and what could be done and that sort of thing.

17 During that meeting, it was -- well, it was
18 sort of an informal meeting in the sense that, you know,
19 people weren't standing up and addressing the group. We
20 were all just seated at a table. People would chime in here
21 or chime there.

22 And during that meeting I said a number of
23 things. I'm sure some of which I can't recall, some of
24 which I can recall. Only one of them had to do with the
25 text messages. And that was, at some point during the

1 meeting, something -- and I don't remember what -- triggered
2 in my mind the realization or the likelihood that there were
3 texts going on both between the informant and Abdul-Latif
4 and Walli and between the informant and the detective. I
5 don't remember why I came to believe that or what was said
6 that caused me to believe that.

7 And at that point in the meeting, I
8 interjected and said something like, Look, make sure that
9 you save all the text messages, both between the informant
10 and the bad guys and the informant and you guys, the law
11 enforcement. And that's essentially what I said. Now, that
12 was one comment in a long meeting.

13

14 E X A M I N A T I O N

15 BY MS. WELLMAN:

16 Q. Did anyone object to that?

17 A. No, I don't recall anyone objecting. I think if
18 they did, I would recall that. I don't recall any reaction
19 to it.

20 Q. Nothing at all?

21 A. You know, I don't have an independent recollection
22 of anyone saying anything in response or -- but, no, I don't
23 think anyone objected.

24 Q. Okay. Did anyone -- was there any discussion in
25 terms of how to preserve text messages?

1 A. Not at that meeting, no.

2 Q. Or e-mails?

3 A. There was no discussion of how to do that at that
4 meeting.

5 Q. Okay. Was there a discussion of that nature at
6 any other meeting?

7 A. Yes.

8 MR. WESTINGHOUSE: Can I ask -- let me just
9 interrupt for a minute.

10 (Pause in the proceedings.)

11 Q. (BY MS. WELLMAN) Tell us, what meeting was that
12 discussed at?

13 A. I don't recall anything specific about it. But I
14 do recall Ethan -- I mean, I don't recall where it was, who
15 else was present, any of those details. I do recall Ethan
16 talking to me about how they saved their texts, something
17 about sending them to an e-mail account or printing them
18 out, something like that. But that was information that was
19 just being told to me as opposed to me, you know, relaying
20 that to someone else.

21 Q. And do you have any specific memory --

22 A. I'm sorry. Sam DeJesus was not present for that
23 particular discussion when Ethan was talking about how he
24 printed off his texts.

25 Q. Did -- to your knowledge, did Ethan ever tell

1 DeJesus how to save the texts?

2 MR. WESTINGHOUSE: In your presence? Is that the
3 question?

4 Q. (BY MS. WELLMAN) In your presence or did Ethan
5 ever say to you, I've told DeJesus to preserve the texts,
6 how I'd like him to preserve the texts?

7 A. Ethan has never told me that.

8 Q. Have you ever talked to Detective DeJesus about
9 how you would like him to save your texts?

10 A. No.

11 Q. Did he ever -- did he, being Detective DeJesus,
12 ever complain to you that it would be difficult to save his
13 texts?

14 A. No.

15 Q. Was there any discussion with Sergeant Allen or
16 Detective DeJesus or Detective Tomlinson or anyone from the
17 SPD about preserving their text messages in a particular
18 way?

19 Any protocol, I guess, is the question not --
20 obviously you talked to them about preserving it. Did you
21 discuss any sort of protocol with them in terms of how you
22 would like them preserved?

23 A. No.

24 Q. Okay. When did Detective DeJesus conduct the
25 factory swipe of his cellphone?

1 A. I have no idea.

2 Q. Do you know when Childs reset his phone?

3 A. Nothing beyond what we've produced to you in
4 discovery.

5 Q. In an earlier letter you said that Childs couldn't
6 recall when he did it. Is that the end of the story, or
7 have you revisited that with Childs?

8 A. I don't have any -- any information about that
9 apart from what we've produced to you in the discovery in
10 this case.

11 Q. Okay. There was an interview of Childs on
12 July 24, and the report looks like it's signed by Via and
13 Randolph. Are those the two agents that were at that
14 interview?

15 A. Can I see that, please?

16 Q. The July 24? That's the one thing I don't know if
17 I have. This is the 17th. It's similar to this in that
18 it's -- the two names are down here, but...

19 A. And this was an interview report of who?

20 Q. Childs. July 24. Do you remember that meeting?

21 A. Not off the top of my head.

22 Q. Just give me a minute. I don't know if we
23 included it.

24 MS. WELLMAN: This is -- Bob, for your knowledge
25 it's Exhibit F -- I mean, I'm sorry -- V. It's a July 25

1 letter.

2 Q. (BY MS. WELLMAN) In the second page, you mention
3 a July 24 meeting or interview of Childs.

4 MR. WESTINGHOUSE: I'm sorry.

5 A. I'm not finding it.

6 MR. WESTINGHOUSE: Childs? I see a DeJesus. I
7 don't see a reference to Childs.

8 Q. (BY MS. WELLMAN) Oh, sorry. I have that wrong,
9 then. I have the wrong resource page. Sorry. Let's back
10 up.

11 So Childs, you knew -- when did you first
12 know he was working on the investigation? You said you
13 weren't sure if his name was mentioned at the June 6,
14 10 a.m. meeting. When did you -- when do you recall that
15 you knew it was Robert Childs?

16 A. I don't recall the specific point in time that I
17 learned his name. It was early on in the investigation,
18 most likely within a few days of June 6.

19 Q. Okay. Did you ask for a background check on
20 Childs?

21 MR. WESTINGHOUSE: Well, hold on here. Again, I'm
22 not certain where this is headed. The focus, again, is on
23 the text messaging. What the background is or what we knew
24 about the background about Mr. Childs I don't think is
25 directly related to that.

1 MS. WELLMAN: Well, again, it's your choice
2 whether to answer or not. I think there are other issues in
3 the case in terms of control over Childs and
4 Detective DeJesus. And one of the questions I have is: As
5 head of this investigation, did you either inquire of
6 Detective DeJesus whether he did a background, or did you
7 question whether Childs had any criminal history?

8 MR. WESTINGHOUSE: Let's move on.

9

10 E X A M I N A T I O N

11 BY MR. LEVIN:

12 Q. I want to show what is marked as Bates Nos. 314
13 to 322. These are the text messages between Detective
14 DeJesus and Robert Childs on June 4.

15 At the time you went in on the June 6
16 meeting, were you aware of these text messages?

17 A. No.

18 Q. And when did you become aware of those text
19 messages?

20 A. I believe that --

21 MR. WESTINGHOUSE: Can you just hold that answer.
22 I've got to sign something.

23 (Pause in the proceedings.)

24 A. My recollection is that I first saw these sometime
25 after the arrests in the case when we were collecting

1 discovery to disseminate it to you all. And maybe -- I
2 won't get off on the tangent now, I would like to talk about
3 the later -- the discovery list that we provided to the
4 agents in terms of cataloging things to collect. I believe
5 this was given to Mike Dion for us to produce in discovery,
6 you know, at that time, after we had made that request.

7 Q. (BY MR. LEVIN) And so you became aware of this
8 through Mike Dion after the arrest in the case?

9 A. No. I mean, I guess what I'm saying is at -- at
10 some point after the arrest, we started collecting discovery
11 materials. And of course, we review those and we
12 disseminate those you. And during that process is where I
13 recall first seeing this.

14 Q. But you were aware at the June 6 meeting that
15 there were text communications going on between DeJesus and
16 Childs?

17 A. Well, like I said, something was said at the
18 June 6 meeting -- during that meeting that caused me to say,
19 Hey, make sure you save all the texts between Childs and the
20 bad guys and Childs and you guys, meaning law enforcement.
21 So I don't remember what that was.

22 In other words, I don't know if I was
23 specifically told by, like, Sam DeJesus, I am texting
24 Childs, or whether there was a comment that led me to
25 suspect that might be going on, but enough that I said, Save

1 them.

2 Q. Would it have been anyone else other than DeJesus
3 at that meeting who was texting with Childs?

4 A. I don't think anyone was texting with him at that
5 meeting.

6 Q. Well, what I'm saying is, you say something popped
7 in your mind that this may be an issue. And I was just
8 wondering whether you had an idea or memory as to who it
9 would be an issue between.

10 In other words, who would have been the
11 texting parties?

12 A. It would either have been, in my mind at that
13 time, either Sam DeJesus or Erik Allen because those were
14 the only two people at the meeting that, according to my
15 knowledge, had met with Childs at that time.

16 Q. What was your understanding at that meeting
17 regarding what DeJesus' role was to be in that
18 investigation?

19 A. After the meeting or before the meeting?

20 Q. During the meeting what was your understanding
21 about his role in the investigation? Did you have a -- did
22 you have an idea of what role he was going to play in the
23 investigation?

24 A. Moving forward?

25 Q. Yeah.

1 A. I don't think so. I don't think I developed any
2 understanding of that at that time.

3 Q. Did you have an idea of who was going to be
4 handling Childs, who was going to be dealing with Childs
5 during the investigation?

6 A. At that meeting I don't think I formed that
7 understanding.

8

9 E X A M I N A T I O N

10 BY MS. WELLMAN:

11 Q. Did you ever form that understanding after that
12 meeting?

13 A. Well, I was a participant in this investigation,
14 so I became aware of who was in contact with Robert Childs
15 after the meeting.

16 Q. And who was that?

17 A. Sam DeJesus, Ethan Via, Albert Kelly, primarily.

18 Q. Okay. Did Sergeant Allen ever text message or
19 communicate by text messaging with Childs?

20 A. I have no idea. But we don't have any of those
21 texts, so I'm led to believe, no.

22 Q. Okay.

23 MS. WELLMAN: Did you have more on that area?

24 MR. LEVIN: Well, yeah.

25 ///

1 EXAMINATION

2 BY MR. LEVIN:

3 Q. Who were the representatives of the JTTF that were
4 at that meeting as best as you recall?

5 A. I've told, Sean Moore, Ethan Via.

6 Q. So you're saying that only two members of the JTTF
7 were at the meeting and both of them were FBI agents?

8 A. No. What I'm saying is that of the people I
9 recall being at the meeting, Sean and Ethan are on the JTTF.
10 Like I said, there were other people at that meeting. I
11 don't recall who they were. And thus I don't recall if they
12 were on the JTTF or not.

13 Q. What about Erik Allen? Do you know him to not be
14 a member of the JTTF?

15 A. That is my understanding, that he is not on the
16 JTTF. And similarly, Sam DeJesus is not on the JTTF, to my
17 understanding.

18

19 EXAMINATION

20 BY MS. WELLMAN:

21 Q. Can you clarify that, though? Is -- when you say
22 "not on the JTTF," do you mean he's not a Joint Task
23 Terrorism officer, or do you mean he's not part of a
24 joint -- JTTF-led investigation? Are those --

25 A. Let me just --

1 Q. Yeah. If you could explain that.

2 A. I won't choose either -- I won't choose either of
3 those options, but I'll tell you what I think.

4 Q. That would be good.

5 A. The JTTF is a task force. It has identifiable
6 members of the task force. And I work with that task force
7 quite a bit. So I know a lot of the people on the task
8 force, and I know of others.

9 And so when I say someone is on the JTTF,
10 that means that they're either an FBI agent who sits on a
11 squad, a terrorism squad, or they're a local law enforcement
12 officer who is assigned to the JTTF and sits with the JTTF
13 and, for all intents and purposes, is a part of that group.
14 So that's what I mean.

15 Q. Okay.

16 A. So for example, I know Greg Tomlinson. He's an
17 SPD detective. He's not on the JTTF in my view. And so
18 that's the best way I can answer your question.

19 Q. Was there any SPD officer in this JTTF-led
20 investigation that is on the JTTF?

21 A. I don't know what you mean by that.

22 Q. Well, are there any Seattle police detectives
23 involved in this investigation that are also on the JTTF?

24 A. Well, the -- I mean, the answer is essentially no,
25 with the caveat that, you know, the word "involved" in this

1 investigation is pretty broad. I don't recall right now if
2 an SPD officer who's assigned to the JTTF had some minor
3 role during this investigation, such as, you know, doing
4 surveillance or something like that.

5 Q. Right.

6 A. But Sam DeJesus, Ethan Via, and Al Kelly were the
7 primary investigators in this investigation.

8 Q. Okay.

9 A. And Ethan and Al are FBI agents. They're on the
10 JTTF. Sam DeJesus is an SPD detective who I do not believe
11 is on the JTTF and I've never been led to belief that he was
12 ever on the JTTF.

13

14 E X A M I N A T I O N

15 BY MR. LEVIN:

16 Q. Was the purpose of -- or one of the purposes of
17 the June 6 meeting to bring the feds into this
18 investigation?

19 A. I would say that was the primary purpose of
20 setting up the meeting, to do that. And then that was
21 accomplished during the meeting. The meeting sort of
22 morphed into a "okay, where do we go from here."

23 Q. And who made those decisions regarding where do we
24 go from here?

25 A. Well, I don't think there were really specific

1 decisions that were made at the meeting other than sort of,
2 Okay, FBI will take this investigation and start moving
3 forward with it.

4 Q. Okay. So in other words, as a result of the
5 meeting, it was going to be an FBI-led investigation?

6 A. I think that's correct.

7 Q. And that decision was made at that meeting.

8 A. Yes.

9 Q. So as an FBI-led investigation that also involved
10 officers of the Seattle Police Department, what decisions
11 were made regarding how those parties would coordinate their
12 efforts?

13 A. At the meeting?

14 Q. Yeah.

15 A. I don't think any decisions were made along those
16 lines. To my recollection, the one decision that was made
17 in terms of steps to move forward was the FBI was going to
18 meet with the informant at some point, you know, shortly
19 thereafter and just kind of determine where to go from
20 there.

21 Q. But there was -- but there wasn't any effort to
22 replace DeJesus as the informant's primary contact?

23 A. I don't recall that being discussed in any way in
24 terms of -- certainly there was no discussion of replacing
25 Sam DeJesus in any way, but there was no discussion of who

1 would be the primary contact or -- none of that was
2 discussed at that meeting.

3 MS. WELLMAN: Was it ever discussed other than at
4 that meeting?

5 THE WITNESS: I was never part of a discussion
6 where a decision was made who would be a primary handler of
7 Robert Childs but -- so I don't know if anyone else --

8 MS. WELLMAN: Well, to your knowledge, is
9 Detective DeJesus the primary handler of Childs?

10 THE WITNESS: I think he had the most contact with
11 Robert Childs as compared to Ethan Via or Robert Kelly. I
12 mean, they certainly had contact with him. They certainly
13 gave Robert Childs instructions as well. But I think Sam
14 DeJesus had the most direct contact with him.

15 Q. (BY MR. LEVIN) What about -- what about any --
16 was anything discussed during that meeting regarding how to
17 make sure all the parties are apprised of the direction of
18 the case, communication among the various investigators?

19 A. I don't think so. I mean, there were -- although
20 there were quite a few people at the meeting, it was more
21 because either they had, you know, background information to
22 lend or something like that. But it was pretty clear,
23 moving forward, that it was going to be a very small group
24 of -- of investigators that would work the case.

25 When I left the meeting, my sense was that

1 Ethan Via was going to be the lead case agent at FBI and
2 that Sam DeJesus, it appeared, would have some continued
3 role in it. And then -- that was as much as came out of
4 that meeting.

5 Q. So one of those -- one of the responsibilities of
6 the -- of the lead case agent would be to ensure that all of
7 the documentation is gathered, that evidence is preserved,
8 right?

9 A. Sure. I think that's the role of a -- one of the
10 roles of a case agent in a case.

11 Q. Did you have any discussions with Ethan Via about
12 how he was going to do that?

13 MR. WESTINGHOUSE: At that meeting or at any
14 meeting?

15 Q. (BY MR. LEVIN) Well, let's start at that meeting
16 and then go forward. At that meeting was there any
17 discussion with him about that?

18 A. Well, there was -- not in general. But there was
19 a discussion about some evidence and how that was going to
20 be handled. A particular thing was discussed, but in
21 general, no, there was not discussion of how to preserve
22 evidence in that case.

23 Q. And did that particular thing relate to text or
24 e-mail communications?

25 A. No, it did not.

1 Q. At some point you talked to Ethan Via about how
2 the FBI saves it e-mails. I think you said that earlier.

3 A. Texts.

4 Q. Texts. Right. They log it somehow, right?

5 A. Yes.

6 Q. During that communication did Ethan Via ever
7 explain to you that he was aware that Childs and DeJesus had
8 also been texting?

9 A. No. I mean, it -- no. That was not a topic of
10 conversation between me and Ethan at that time.

11 Q. What about following the meeting, following the
12 June 6 meeting?

13 A. Not to my recollection. No.

14 Q. Well, at the June 6 meeting when you -- when you
15 requested that the -- well, no. Let me back up.

16 What is -- what is your normal practice
17 regarding the preservation of text and e-mail
18 communications?

19 MR. WESTINGHOUSE: We're not going to talk about
20 our normal practice.

21 Q. (BY MR. LEVIN) What was your purpose in asking
22 them to save those things? Why did you do that?

23 A. Well, it so happened that not long before that
24 meeting, the case out of New Jersey -- I can't remember the
25 name of the case, but the text message case involving the

1 FBI --

2 Q. Suarez?

3 A. Suarez.

4 -- had come up. And even closer in time to
5 this June 6 meeting, coincidentally, we had had some sort of
6 a training at the U.S. Attorney's Office. And I really
7 don't recall the specifics of it or even when it was.

8 But it was recent enough that, in sitting
9 there during the June 6 meeting, whatever it was that had
10 triggered me to say what I said about saving texts and
11 e-mails was sort of in the front of my mind because of the
12 case, because of the training. And so I was more sensitive
13 to that issue than I may otherwise have been, so I recall
14 interjecting that at the time.

15 Q. Was any of it motivated by a memo written by David
16 Ogden in January 4 of 2010 addressing line assistance
17 obligation with respect to --

18 MR. WESTINGHOUSE: Again, I'm going to suggest we
19 move on because the important fact is why the -- what the
20 communication was, not the reasons that prompted that
21 communication. We don't dispute that the text messages
22 needed to be preserved. And that was the focus of the
23 statement.

24 ///

25 ///

1 EXAMINATION

2 BY MS. WELLMAN:

3 Q. Can I go to a tangent because I found the -- the
4 report that I was referring to. This is, it looks like, an
5 interview of Childs at your office. And I just would like
6 some clarification of -- it just says interviewing agents,
7 and it doesn't make clear whether you or Mike were present
8 during that meeting.

9 A. Okay.

10 Q. So start with, who was at the meeting?

11 A. I'm going to read it first.

12 Q. Okay.

13 A. I wasn't at this meeting.

14 Q. You were or were not?

15 A. I was not at this meeting.

16 Q. Was Mike at the meeting?

17 A. I do not believe so. I do not believe this was at
18 the U.S. Attorney's Office. I'm not sure what leads you to
19 believe that.

20 Q. Note, the interview with the USAO took place in
21 the attorney's office.

22 Am I reading that -- the bottom paragraph, am
23 I reading that wrong?

24 A. It says the -- it says, Note, the interview with
25 the U.S. Attorney's Office took place on July 17, 2012.

1 MR. WESTINGHOUSE: The previous sentence
2 references that.

3 Q. (BY MS. WELLMAN) July 9. So you had an interview
4 with Childs on the 9th? Is that what -- can you help
5 clarify what that -- did you meet with Childs regarding this
6 on July 9? Can you clarify what this is saying, then,
7 because obviously I'm having trouble reading it.

8 A. I didn't write this. I wasn't at this meeting.

9 Q. Okay.

10 A. I will tell you, in an effort to try to clear this
11 up, what my understanding of this is.

12 MR. WESTINGHOUSE: Let's just answer the question.

13 THE WITNESS: Okay.

14 MR. WESTINGHOUSE: Was there a meeting with
15 Mr. Childs on July 9.

16 A. Not that -- I don't recall a date of any meetings
17 I had with Robert Childs, so I can't tell you that. But
18 this says, On July 9, Childs sent the authoring agent, Ethan
19 Via --

20 Q. (BY MS. WELLMAN) Okay.

21 A. -- a text message asking about the timing of an
22 interview at the U.S. Attorney's Office.

23 Q. Right.

24 A. Then it says, Note, the interview with the U.S.
25 Attorney's Office took place on July 17.

1 Q. So was there a meeting with you or Mike Dion on
2 July 17 and Childs?

3 A. I don't recall the date of any meeting I had with
4 Robert Childs. Any meeting would have been documented. You
5 would have a report about it. I don't remember the dates.

6 My understanding of this comment that you're
7 asking about is that Ethan Via was simply noting the fact
8 that he received a text message from Robert Childs asking
9 about a future planned meeting.

10 Q. Okay.

11 A. That was to be held.

12 Q. And was there a future planned meeting, but you
13 don't recall the date of that future planned meeting?

14 A. I recall one meeting with Robert Childs that took
15 place at the U.S. Attorney's Office. I also recall that
16 there's a 302 that documents that. I do not recall the date
17 of the meeting.

18 Q. Is this that meeting?

19 A. Yes.

20 Q. Okay.

21 A. This is a 302 of the meeting.

22 Q. Okay.

23 A. July 17, 2012.

24 Q. Okay. And Detective DeJesus was at that meeting
25 as well?

1 A. I -- yes, I believe he was.

2 Q. Okay. With respect to this meeting -- you
3 produced notes from Kelly, I believe -- it does not include
4 notes regarding the discussion about resetting the
5 telephone. Is there a reason for that?

6 A. Are you asking me --

7 Q. You produced notes --

8 A. We produced you the notes --

9 Q. -- that Kelly took.

10 A. -- all the notes that were given to us, so...

11 Q. Okay. So let's put that in the discovery camp,
12 and you and I can talk about that letter.

13 Did you ever -- was this the first time that
14 you had talked or met with Childs directly?

15 A. Yes.

16 Q. Did you tell Childs, specifically, to preserve his
17 text messages?

18 A. This was just a few months ago.

19 Q. Yeah.

20 A. I don't recall if the subject of his text messages
21 came up at that time.

22 Q. Okay. Did you -- to your knowledge, did anyone
23 tell Childs, specifically, to preserve his text
24 communications or his e-mail communications?

25 A. This was the first time I ever met with Robert

1 Childs. There was no discussion of text communications at
2 that meeting that I recall.

3 Q. Did you understand that Via or Kelly or Sergeant
4 Allen or Detective DeJesus, somebody, made it clear to
5 Childs he should not be destroying text messages?

6 MR. WESTINGHOUSE: Do you mean that someone in the
7 investigation tell --

8 MS. WELLMAN: On the law enforcement team.

9 MR. WESTINGHOUSE: -- tell Todd Greenberg that
10 they had given that direction to Mr. Childs?

11 MS. WELLMAN: Sure.

12 A. I don't recall that, no.

13 Q. (BY MS. WELLMAN) Did you believe that Childs was
14 preserving information in his cellphone?

15 MR. WESTINGHOUSE: We're not going to answer that.

16

17 E X A M I N A T I O N

18 BY MR. LEVIN:

19 Q. Let me just go back to the June 6 meeting. You
20 indicated earlier that you told them that e-mail and text
21 communications should be preserved. Is that fair?

22 A. I don't think I used the word "preserved," but I
23 think I said "save."

24 Q. Okay. And when you did that, you were referring
25 not only to communications between law enforcement and

1 Childs but also Childs and the targets of the investigation.

2 A. Yes. I recall being very clear to say both. You
3 know, I said them both separately. Because, again, this
4 Suarez issue, for lack of a better term, was in my head.
5 And I wanted to make sure that I was clear to save their --
6 you know, law enforcement's text with the informant as well
7 as the ones between the informant and the targets.

8 Q. And at that point on June 6, you had not
9 personally seen any text messages between Childs and the
10 representative of law enforcement or Childs and any other
11 targets of the investigation.

12 A. Correct.

13 Q. Okay. When was the first time that you saw
14 these -- either texts from Childs to law -- between -- texts
15 between Childs and law enforcement or between Childs and the
16 targets of the investigation?

17 MR. WESTINGHOUSE: Erik, I'm sorry. I think we've
18 covered that. Jennifer asked, and I believe the response
19 from Mr. Greenberg was that none of the text messages came
20 to his attention until after the arrest. So perhaps we
21 shouldn't go back and repeat again.

22 Q. (BY MR. LEVIN) I thought that was -- you were
23 referring earlier -- I had showed you some texts between
24 DeJesus and Childs, and you indicated that you saw those
25 after the arrest in this case.

1 A. Correct.

2 Q. There are other texts between Childs and law
3 enforcement as well as Childs and the targets of the
4 investigation. Are -- those, you do not become aware of
5 until after the investigation had -- after an arrest had
6 been made?

7 A. Well, let me take them one by one.

8 Q. Yeah.

9 A. First, texts between Childs and the FBI agents. I
10 believe that I would not have seen those until after the
11 arrests. That's my best recollection. I also know that I
12 was told that there were some during the investigation.
13 Because we talked about -- you know, I talked with Ethan Via
14 and Al Kelly, just once in a while it would come up, You
15 need to save the texts. And so I knew they had some. I
16 don't think I reviewed them until afterwards, after the
17 arrest.

18 With respect to texts between Childs and
19 Abdul-Latif and Walli, I definitely saw some of those before
20 the arrests because they were on the consensual wiretap
21 system which I was reviewing once that started. So I saw
22 those. And there were others that were saved through
23 various means like Childs gave it to Sam DeJesus and he
24 forwarded it to the FBI and, you know, they printed it out.
25 There are some of those in the discovery.

1 And I was aware, at least of the contents of
2 some of those, because they were in the complaint that we
3 filed in the case. I don't know if I saw the verbatim or
4 whether the agent, you know, typed it in the complaint, but
5 I knew of some of those at the time.

6 Q. So let me just talk about these one by one.

7 So you were told that there were some texts
8 between the FBI and Childs; is that -- that's right?

9 A. Correct.

10 Q. And you were told that by whom?

11 A. Ethan Via or Al Kelly or both.

12 Q. Okay. So I want to show you what's Bated as 113
13 to 114. It's a -- it's a report by -- I believe it's filed
14 by Albert Kelly concerning some text communications.

15 Is this an example of one of the things that
16 you learned about, one of the text communications that you
17 learned about?

18 A. Well, this -- I would describe this as being texts
19 between the informant and the targets of the investigation
20 as opposed to what you were just asking about, was texts
21 between the informant and FBI agents.

22 Q. Okay.

23 A. This, what you put in front of me, is an example
24 of what I was just talking about in terms of this is a
25 string of text messages between the informant and Walli

1 that -- this is what I was saying, I don't know if I read
2 these during the investigation, meaning pre-arrest, or if I
3 was just told about these or they were summarized for me in
4 the complaint by the agents.

5 But in some form or fashion, I was aware of
6 the general contents of these between the informant and the
7 targets.

8 Q. Okay. Well, between the targets and the
9 informants, you said that some of them came through the
10 electronic surveillance system and that's another way that
11 you became aware of --

12 A. Well, let me clarify that so we're clear.

13 I think the date was June 10; Robert Childs
14 was provided a cellphone by the FBI. He consented to that
15 phone being wiretapped. And at that point on, we were privy
16 to all of his phone calls and his texts through a system;
17 it's a computer system. And on a regular basis, I was
18 reviewing that evidence during the investigation.

19 Q. Okay. So you were privy to the communications
20 post starting on June 10 on?

21 A. Correct.

22 Q. His text communications?

23 A. With the defendants.

24 Q. With the targets?

25 A. Yes.

1 Q. But you also knew that prior to that, those text
2 communications were not being captured by this system
3 because it was -- predated the time that you had an FBI --
4 he had an FBI phone that he had consented to be wiretapped?

5 A. Correct.

6 MS. WELLMAN: Did you also know that he kept his
7 personal phone after the 10th?

8 THE WITNESS: I don't think I had discussions
9 about the logistics of, like, giving him his phone, when the
10 phone was collected, any of those things. I was not
11 involved in discussions about that.

12 MS. WELLMAN: Okay. So did you trust Via to take
13 care of that in terms of preserving the personal phone?

14 THE WITNESS: Yeah. I -- I did not micromanage
15 the collection of specific pieces of evidence. So those
16 were not decisions that I was, you know -- discussions that
17 I was having.

18 MS. WELLMAN: Okay. Sorry I interrupted you.

19 Q. (BY MR. LEVIN) So I guess the question is: With
20 respect to those communications between Childs and the
21 targets of the investigation that occurred prior to the time
22 that he had an FBI phone, what was your understanding as to
23 how they were being preserved?

24 A. At the time?

25 Q. Yeah.

1 A. I don't think I had a specific -- I don't think I
2 knew how they were being preserved in terms of, like,
3 mechanically how they were being preserved. I don't think I
4 knew.

5 Q. What was your understanding about who was
6 preserving them?

7 A. At that time I don't know if I formed one,
8 specifically. I was told about -- like, these texts that
9 are in front of me here on this page, I remember generally
10 knowing about these at the time, you know, shortly
11 thereafter at least. So I was led to believe they were
12 preserved, so I could be told about them.

13 But I don't recall knowing who preserved
14 them, how they were preserved, in terms of, like, were they
15 printed, were they saved on a computer. Those details, I
16 don't think I had those details in my head at the time.
17 Obviously, when we collected these things from discovery,
18 you know, these reports make it pretty evident how,
19 mechanically, they were preserved.

20 MS. WELLMAN: But at the time, so did you just
21 trust that they were being preserved?

22 THE WITNESS: I did trust that because I was told
23 about them and we were including them in the complaint and
24 things like that. So it was pretty clear to me that they
25 were being preserved.

1 Q. (BY MR. LEVIN) Was your expectation that Ethan
2 Via was handling this as lead case agent?

3 A. Not necessarily, no. Any number of investigators
4 might preserve a particular text for whatever reason, so I
5 didn't have that understanding.

6 Q. So was there expectation on -- so among those law
7 enforcement agents that you had an expectation would be
8 preserving texts would be Sam DeJesus; he was one of the law
9 enforcement agents that you expected would be saving
10 communications?

11 A. He was among the group that might end up being the
12 one to save them. And in fact, he did save some, as we see
13 in discovery, the ones between the informant and the
14 targets.

15 Q. In your letter you also talk about other instances
16 between June 6 and June 22 when the need to preserve text
17 messages was raised with the investigators. What do you
18 recall about these instances? In -- what form did they
19 take? Were they face-to-face meetings, telephone calls?

20 A. So that's between up to the arrest? Is that
21 what --

22 Q. Your letter gives a window of June 6 to June 22.

23 A. Yeah. Okay. I think I answered this already.

24 I don't have specific recollections of those
25 conversations, you know, as compared to the June 6 meeting.

1 I have a vivid recollection of that entire meeting,
2 obviously not verbatim. But it was a -- it was an important
3 meeting. As it turned out, it lead to this case. So I
4 remember that meeting. I remember what I said there.

5 I don't recall the specifics of any of these
6 other conversations. I do have a recollection that along
7 the way of this investigation, the topic of saving text
8 messages was discussed between me, Mike Dion, and
9 investigators.

10 I had much more contact during the
11 investigation with Ethan Via and Al Kelly than I did with
12 Sam DeJesus, so I have no idea whether Sam DeJesus was part
13 of any of those other conversation or not. I know at least
14 Ethan was, because I remember him telling me at some point
15 how they were -- had to forward the texts to the e-mails and
16 print them or whatever.

17 So I guess that's a long way of saying it was
18 discussed on other occasions. I don't remember the details
19 of those conversations.

20 Q. And -- and when you and Ethan Via -- when Ethan
21 Via explained to you about how texts were being saved, was
22 he specifically referring to FBI/Childs texts or law
23 enforcement/Childs texts?

24 MR. WESTINGHOUSE: If he said so.

25 A. Yeah. It was more of -- it was just sort of an

1 aside that he was just basically saying, you know, It's
2 really a pain to save these things. We actually have to
3 forward this, print this, and do this.

4 And he was just kind of telling me. It was
5 just a comment that he made to me. And I remember it
6 because I hadn't really thought before about, you know, the
7 logistics of it. So I just remember him explaining it to
8 me.

9 Q. (BY MR. LEVIN) Did he ever explain to you how he
10 was going about preserving texts between Childs and the
11 targets of the investigation?

12 A. Well, those were primarily captured on that
13 wiretap system.

14 Q. Predating -- predating the 10th of June, those
15 communications.

16 A. There were only a few days there. That is only
17 like a three- or four-days' window. I don't remember that
18 we talked about how those were being preserved, no.

19 Q. Well, three or four days, it's --

20 A. Well, we --

21 Q. -- actually a little bit longer than that, I
22 think.

23 A. No. Because we --

24 MR. WESTINGHOUSE: June 6th through June 10th.

25 A. June 6th -- you're talking about the 6th, 7th,

1 8th, and 9th, then. Four days.

2 Q. (BY MR. LEVIN) So was it your position that the
3 period of time in which Childs was a -- working solely with
4 the SPD -- that would be June 2nd, 3rd, 4th, and 5th -- that
5 those did not need to be preserved?

6 A. Well, first of all, my understanding is that
7 Childs began working for the SPD on June 3, not June 2.

8 Q. Okay.

9 A. And -- but, no. That is not my position, that
10 those texts should not have been preserved.

11 Q. Okay. So --

12 A. But your question to me was, did Ethan Via from
13 the FBI tell me how he was preserving texts prior to the
14 wiretap system.

15 Q. Yeah.

16 A. And I'm explaining to you that Ethan Via wouldn't
17 have gotten involved in the investigation until June 6. So
18 there was a four-day window between that and the wiretap
19 system. And as I said, he did not tell me how texts were
20 being preserved, the logistics of that.

21

22 EXAMINATION

23 BY MS. WELLMAN:

24 Q. But your understanding was they were being
25 preserved, to your knowledge.

1 A. I've answered that.

2 Q. Yeah. All right.

3 A. All right.

4 Q. I have a question about -- you have a -- I
5 highlighted it. This is a July 20 letter that you sent and,
6 the highlighted part, the first sentence, am I correct the
7 report that -- the FBI report --

8 A. Can -- let me finish reading.

9 Q. Oh. Sorry.

10 A. Okay.

11 Q. So is the report you were referred to the cart
12 report that was part of the original?

13 A. I -- I identified it in this letter by Bates
14 number.

15 Q. Well, that's not a report actually. That's a --

16 A. Is it a CD?

17 Q. No.

18 MR. WESTINGHOUSE: Again, I'm wondering, if this
19 is just discovery, if we could, perhaps, complete this.

20 MS. WELLMAN: I'm trying to understand what he's
21 saying there. Is probably a little discovery, a little
22 factual.

23 Q. (BY MS. WELLMAN) I guess the question is: Based
24 on the information you had when you initially provided
25 discovery, did you know that the text communications had

1 been destroyed at that point?

2 A. By who? Which text communications are you
3 referring to?

4 Q. By Childs or -- let's start with Childs. Did you
5 know at that time in --

6 MR. WESTINGHOUSE: Which time?

7 Q. (BY MS. WELLMAN) -- August of 2011, that the text
8 messages between Childs and DeJesus had been destroyed by
9 Childs?

10 A. I -- at some point that -- and I would have to
11 look back at the date of the FBI report, so it's going to
12 speak for itself, but at some point I learned through a
13 report that Robert Childs had reset, quote/unquote, his
14 cellphone.

15 Q. Okay. And so that's the first time that you knew
16 that there had been a reset?

17 A. Yes.

18 Q. Okay.

19 A. Yes.

20 Q. I think that answers it for me. Can I see that?
21 I think -- so the report is Bates 1570. And I apologize. I
22 don't have it. I thought I did. Okay. And the forensic
23 examination that I'm referencing is the cart report, that I
24 believe you produced with the initial discovery up to
25 Page 656.

1 So you're not suggesting by this, though,
2 that I should have known from this forensic exam that the
3 phone had been reset?

4 A. That who should have known?

5 Q. I should have known or Erik should have known.

6 MR. WESTINGHOUSE: I'm not certain I understand
7 your question.

8 Q. (BY MS. WELLMAN) This sentence reads that you've
9 produced to us, by July 25, 2011, a forensic exam of the
10 telephone, of Child's telephone. And if I understand what
11 your --

12 MR. WESTINGHOUSE: And your question is?

13 Q. (BY MS. WELLMAN) The question is: Did you know
14 from that examination that the phone had been reset?

15 And I think your answer is no, you only knew
16 by this FBI report; is that correct?

17 MR. WESTINGHOUSE: You're asking whether --

18 Q. (BY MS. WELLMAN) When you knew --

19 MR. WESTINGHOUSE: -- the witness knew --

20 Q. (BY MS. WELLMAN) -- from this forensic
21 examination that the phone had been reset. And I'm
22 referring to that examination as a cart exam.

23 But your answer is, no, you knew it from the
24 FBI report, whether it's this page or something else that
25 says it was, in fact, reset.

1 Or if it's too confusing, because I don't
2 have the cart in front of me, that's fine too.

3 A. I'm pretty confused. I'm not sure what you're
4 asking. I'm sorry.

5 Q. The most important is: When did you know that the
6 evidence had been destroyed?

7 MR. WESTINGHOUSE: I think the answer was he
8 doesn't know for sure, but he learned it through the report.

9 A. There is a report in the discovery. It was an
10 interview of Robert Childs conducted by an FBI agent -- I
11 think it was Ethan Via -- during which it documents that
12 Robert Childs explained he did a reset of the phone.

13 By reviewing that report and discussing that
14 report with the agent, that's how I learned about the reset.

15 Q. Okay.

16 A. Whatever the date of that report is, would put a
17 date on that.

18 Q. Okay. That answers it for me.

19

20 E X A M I N A T I O N

21 BY MR. LEVIN:

22 Q. I did have a -- just a closeout, the June 6
23 meeting and then maybe this will relate to some other
24 meetings as well.

25 You had said that one of the reasons that

1 this was on your mind was because of the Suarez case and a
2 training you had received here at the U.S. Attorney's Office
3 and that those impressed upon you the need to ensure that
4 text messages were -- and e-mails were being preserved.

5 Is that fair?

6 A. Yeah. It had been highlighted as a pitfall in
7 other cases, including the New Jersey case. And so we were
8 trained on it, in the new age of, you know, electronic
9 communications, to be aware of this issue.

10 Q. During that June 6 meeting, did you ever convey
11 this knowledge that you had received to the members of the
12 investigative team?

13 A. Did I -- I did not talk about the New Jersey case
14 or the fact that we had just had a training, no. I did not
15 do any of that.

16 Q. Okay.

17 A. Later, at some point later, I remember talking to
18 the FBI agents about the New Jersey case. They were
19 independently aware of it. They had received training too.
20 This was Albert Kelly and Ethan Via. But none of that was
21 discussed at this June 6 meeting. I simply made the
22 comment, Save all texts and e-mails between the informant
23 and the bad guys and the informant and law enforcement.

24 Q. So to the best of your recollection, as you give
25 out this direction to the team, what were their reactions?

1 What reactions did you get, if any?

2 A. I do not recall any reaction whatsoever. And to
3 explain that, I mean, this was -- like I said, this was a
4 long meeting. There was a lot of things being discussed:
5 What had happened so far in the investigation; ways to move
6 it forward; to some extent, who was going to do what; who
7 was going to let other people know, you know, what was going
8 on.

9 There was -- I gave a couple of other pieces
10 of what I would call, you know, legal advice, here and
11 there, along the way, during the meeting. It's kind of on
12 and off, on and off, people chiming in. It didn't call for
13 a specific response. And I don't recall anything. I think
14 I told you earlier, if someone had objected to it or called
15 it into question, I think I would have -- I would recall
16 that. So I don't think that happened.

17 Q. During this meeting did you observe other people
18 taking notes of what you were saying, writing down the legal
19 advice you were giving?

20 A. I have no recollection. People were writing
21 things down. I have no recollection of anyone wrote down
22 anything I said.

23 Q. Was there any discussion about the importance of
24 preserving evidence in general, aside from texts and
25 e-mails?

1 A. No. I mean, I think that goes without saying. In
2 any investigation we preserve evidence.

3 Q. Was there any discussion in general about the need
4 to preserve evidence from the inception of these kinds of
5 operations, in other words, the beginning of these sting
6 operations?

7 A. I'm not sure what you're getting at there.

8 Q. Well, you were aware that -- that a very frequent
9 defense in -- in these kinds of sting operations is
10 entrapment.

11 MR. WESTINGHOUSE: Rather than answering that, I
12 think your question, as I understand it, was any other
13 discussion about the importance of preserving evidence from
14 the beginning. And that's simply a variation of the
15 previous question, any discussion about the importance of
16 preserving evidence generally. And I think the answer from
17 the witness was, There was no discussion. That was assumed.

18 Q. (BY MR. LEVIN) During your conversations with
19 Special Agents Kelly and Via regarding Suarez and the need
20 to preserve evidence, was there ever discussed the fact that
21 more than just the FBI was involved in the investigation and
22 how to coordinate that? This was after the June 6 meeting.

23 A. The only thing I recall along these lines -- and
24 it's going to get into that discovery materials document
25 that discussion was after the arrests. So I'll talk about

1 this now if you want, or we can come back to that.

2 MR. WESTINGHOUSE: You're referring to the
3 June 27th list?

4 THE WITNESS: Yes.

5 MS. WELLMAN: Yeah. It's marked 8253.

6 E X A M I N A T I O N

7 BY MS. WELLMAN:

8 Q. So before we go into the details on that, so if --

9 A. Actually, let me answer that because I don't want
10 to forget to say this.

11 Q. Okay. Yeah.

12 A. Do you mind handing me that for a second?

13 Q. No.

14 A. I think this is somewhat responsive. I'm trying
15 to avoid getting into a long explanation of this at this --
16 document at this time. But I met with Ethan Via and Albert
17 Kelly and Mike Dion, this is just a few days after the
18 arrests, to start the process of gathering discovery
19 materials. And one of the requests that we got from the FBI
20 agents, and I noted it here in this document on the first
21 line, were I wrote -- I typed, Get from SPD directly.

22 The FBI agents thought it would be more
23 effective and efficient for us, meaning the prosecutors, to
24 get discovery materials from SPD directly ourselves rather
25 than have the FBI be the, you know, go-between. And that's

1 a decision that we made, that we would directly, you know,
2 get reports and get e-mails or whatever it might be from
3 SPD, from Sam DeJesus primarily, as opposed to asking the
4 FBI agents to get that for us.

5 Now, that was -- again, this is discussions
6 after the arrests in terms of collecting the discovery
7 materials.

8 So since that's seemed to have some bearing
9 on your question, I wanted to point that out.

10 Q. So over the course of the investigation, there
11 was -- SPD held on to their evidence; FBI held on to theirs.
12 And the idea being, at the end of the day, after the
13 arrests, then both entities can gather. Or was there a
14 protocol of FBI, along the way, should be gathering anything
15 that SPD has?

16 MR. WESTINGHOUSE: I don't think that was the
17 context of the message -- of the testimony. The statement
18 was that at this meeting a few days after the arrest --

19 MS. WELLMAN: Oh, I understand that. I'm just
20 trying to understand --

21 MR. WESTINGHOUSE: -- US Attorney's office took
22 responsibility for obtaining documents.

23 If you want to ask what was Mr. Greenberg's
24 understanding about how it was being handled up until that
25 time, that's fine.

1 Q. (BY MS. WELLMAN) I guess -- so he said it much
2 more succinctly than I did.

3 So was there a protocol in place, or how was
4 it being handled --

5 MR. WESTINGHOUSE: If he knows.

6 Q. (BY MS. WELLMAN) -- up until that time in terms
7 of making sure that Via and Kelly and you and Dion knew
8 where the evidence was?

9 A. From what I observed during the investigation,
10 some of the evidence -- well, it appeared to me that FBI was
11 trying to get all the evidence from SPD and that SPD was
12 independently preserving their evidence.

13 So I'll give you an example. There was --
14 you know, there were a few -- I think three -- recorded
15 interviews that SPD did with Robert Childs that predated --
16 well, at least most of them, at least, predated, you know,
17 federal involvement. In any event, they had these on CD.
18 And I know, for example, the FBI acquired those, and I
19 listened to them. And at the same time, that SPD maintained
20 those in their evidence.

21 In general that's what was happening based on
22 my observations.

23 Q. Okay.

24 A. That if SPD had collected a piece of evidence or a
25 recording or whatever, they were providing a copy of to it

1 the FBI. When it came time, though, to gathering discovery
2 materials, part of the thought process behind wanting the
3 prosecutors to get everything directly from SPD as opposed
4 to relying on what FBI had gotten or would get, was that we
5 didn't want something to slip through the cracks.

6 And so it was a -- you know, you can imagine
7 it was a very active three-week investigation. We didn't
8 want to just rely on it being complete at FBI. We wanted to
9 sort of -- so we ended up getting a lot of things twice,
10 some from the FBI, some from SPD. But the decision that we
11 made at the FBI agents' direction, postarrest, was to just
12 get everything directly from SPD so we don't miss anything.

13 Q. And who did you work with in terms of getting that
14 information from SPD? Was it Sergeant Allen or detective --

15 MR. WESTINGHOUSE: Todd Greenberg specifically or
16 the U.S. Attorney's Office? Because I think it might not be
17 Mr. Greenberg's primary responsibility.

18 A. For the most part, Mike Dion -- between the two of
19 us, Mike Dion was sort of -- I hate to say in charge of, but
20 we sort of divvied up responsibilities. And he was the one
21 that was primary for gathering the materials from SPD. And
22 I dealt more with the FBI, which was sort of higher volume
23 side of things.

24 Q. (BY MS. WELLMAN) Okay.

25 A. So Mike Dion was the one that personally was

1 involved in collecting materials from the SPD.

2 Q. And who, on the SPD end, helped get that material
3 to Mike Dion?

4 A. From what I'm privy to, which are some e-mails and
5 just discussions, Mike was dealing with Sam DeJesus and Erik
6 Allen.

7 Q. Okay. Was this discovery list discussed with
8 Sergeant Allen and Detective DeJesus at any time?

9 A. That particular document?

10 Q. Or any of the items on this document.

11 A. Well, that document lists essentially every single
12 possible category of discovery material that we intended to
13 gather and produce in this case. So of course, some of
14 those items were discussed with SPD because they had some of
15 them and they were part of our investigative team.

16 Q. Okay.

17 A. But that document, in the process of creating it,
18 was never discussed in my -- to my knowledge with Sam
19 DeJesus or Erik Allen or anyone at SPD.

20 Q. Okay. And this -- and this document includes text
21 messages between source, Childs, and SPD, right?

22 A. Yeah. Let me -- maybe I'll just tell you.

23 Q. Sure.

24 A. I just want to explain to you what this is. And
25 there were e-mails that I'm going to reference -- I've got

1 them -- that we produced to you along with those. And these
2 e-mails are Bates 8251 and 8252.

3 So from the e-mails, you can see June 27 at
4 1:55 a.m. -- so this is, I guess, four days after the
5 arrest -- I sent an e-mail to Al Kelly and Ethan Via of the
6 FBI with a CC to Mike Dion setting up a meeting where I
7 explain, you know, I wanted to sit down, compile a list of
8 all categories of discovery materials. And I wrote in the
9 e-mail, In advance of the meeting, I'll try to make a
10 preliminary list of the materials.

11 Q. Right.

12 A. So we arranged the meeting for that same day at
13 2 p.m. I, then, in advance of that made a list which is
14 very similar to the one we produced, although it was a draft
15 of this -- it was a preliminary version of this, brought
16 this with me to the meeting. We met with Ethan and Al and
17 went through that list, each category.

18 I added some categories. I made some
19 annotations, whatever came out of the meeting with the FBI.
20 Came back to my office, revised the list, and then, that
21 same night, June 27 at 7:44 p.m., I e-mailed this list to
22 the two FBI agents and to Mike Dion saying here's the
23 updated list that we discussed.

24 Q. Was the -- were the text messages on the draft
25 list, to your recollection?

1 A. Yes. They were.

2 Q. And is that the same -- and by text messages, I
3 mean between Childs and SPD, and then the same here, text
4 messages identifying Childs/SPD, Childs/Walli,
5 Childs/Abdul-Latif, Childs/FBI, is that on the original
6 list, to your recollection?

7 A. So in looking at this redacted list we gave you, I
8 am confident that everything not in italics was on the
9 original list.

10 Q. Okay.

11 A. I know that the first italics, Get from SPD
12 directly, I know I wrote that after the meeting.

13 Q. And that's because you had decided that you or
14 Mr. Dion should get it directly from SPD.

15 A. Correct.

16 Q. Okay.

17 A. And so I wrote that note for -- to basically
18 remind Mike and myself that we need to do that.

19 Q. Okay.

20 A. Then there's another italicized thing on Page 2.
21 It says, Will need to download source's phone for some of
22 these.

23 I don't recall whether that was on my
24 original list. My best recollection, and using my common
25 sense, is that it was not.

1 Q. Okay. Can you explain that entry?

2 A. The best I can do is that at some point, most
3 likely during my meeting with Al and Ethan, they said, Oh,
4 to make sure we get all of those, we're going to need to
5 download Child's phone.

6 And so since the point of this list was
7 really to make an all-inclusive checklist for us to make
8 sure we didn't overlook anything in discovery, I made a note
9 of that to remind all of us. So that's my best explanation
10 of that.

11

12 E X A M I N A T I O N

13 BY MR. LEVIN:

14 Q. Was that as a -- was that because the FBI didn't
15 have those things, or was it simply because -- as a backup
16 to whatever the FBI was going to be able to give you?

17 A. I don't know. I don't recall whether I had that
18 kind of detailed knowledge in terms of what they already
19 had, you know, printed out or what was saved electronically
20 somewhere.

21 Q. What about with respect to go to the SPD for
22 certain documents? Was that because it was your
23 understanding that the FBI didn't keep those things? Was it
24 simply a way of --

25 A. No. It was -- like I said, I mean, although we

1 redacted a lot of this list, the things under the SPD
2 category were things that my belief and, frankly, knowledge
3 was that the FBI had almost all, if not all, of them. But
4 we didn't want to rely on that because it was such a hectic
5 investigation.

6 I didn't want to end up in a situation where
7 we say to you guys, Oh, we've given you all of X, and it
8 turns out, well, the FBI only got 19 out of 20 of X. If I
9 had gone directly to the SPD, to the source, I would have
10 gotten all 20.

11 So we just decided, Look, we don't -- we're
12 not going to mess with that. Even though FBI already had
13 most of the stuff we were just going to go separately and
14 independently to SPD, tell them to give us everything. That
15 way we didn't have any concerns.

16 Q. So basically it was your -- it was your belief at
17 that point that the FBI had everything, but this was a way
18 of being doubly sure that nothing slipped through the
19 cracks.

20 A. I think my belief was that they had either
21 everything or most everything, but I didn't really care
22 because I was going to get it myself to be a hundred percent
23 complete.

24 ///

25 ///

E X A M I N A T I O N

BY MS. WELLMAN:

Q. This is a text you produced to us recently. It's marked --

A. Well, let me make one --

I'm sorry.

Q. Okay. Sure.

A. -- other thing clear because you asked this.

I never sat down with anyone at SPD to review that list. My understanding is that Mike Dion used that list to guide his collection of discovery materials from SPD. But this was never e-mailed -- you know, like I said, the e-mails are to the two FBI agents in the case and to Mike Dion. Sam DeJesus was not on this e-mail, and he had no involvement in crafting that list.

MR. WESTINGHOUSE: All you're going to say is you didn't e-mail it to SPD.

THE WITNESS: Right. And I didn't -- he wasn't part -- Sam DeJesus was not part of the discussions that led to the creation of that list.

Q. (BY MS. WELLMAN) Okay. And to your knowledge, was -- gathering all of this information, did that happen fairly quickly, or was there some delay in going directly to SPD?

A. The -- the process of gathering it was started

1 pretty quickly. Things trickle in. So, you know, I mean, I
2 don't know when it was completed. But it's not like we -- I
3 mean, you could tell, the arrest was June 23. By June 27, I
4 prepared a 3-page, single-spaced, itemized list.

5 Q. Right.

6 A. I mean, we were trying to be very proactive in
7 terms of collecting discovery.

8 Q. Right.

9 A. So shortly after June 27, we started the process
10 of collecting the items that were on that list.

11 Q. Okay. And do you recall Mike coming to you and
12 saying, Huh, SPD is saying they don't have text messages?

13 MR. WESTINGHOUSE: The question is...?

14 Q. (BY MS. WELLMAN) Do you recall after June 27 Mike
15 Dion coming to you and saying, SPD is telling me they don't
16 have any text messages?

17 MR. WESTINGHOUSE: Jennifer, what we're going to
18 do is ask you to focus on what Todd said, and then you can
19 ask Mike separately what he said, but not intraoffice
20 communications. Okay?

21 Q. (BY MS. WELLMAN) To your knowledge, after July --
22 after the 27th, did you know that SPD did not have any text
23 messages other than the nine you've produced?

24 A. What -- let me try to answer it this way, and then
25 you can follow-up.

1 Q. Thank you.

2 A. I typed that list of discovery materials.

3 If I could see it again?

4 On two separate places on the list, I wrote,
5 Text messages between source and SPD.

6 Q. Right.

7 A. The --

8 THE WITNESS: Erik, you put in front of me a
9 series of text messages a few minutes ago between Sam
10 DeJesus and Robert Childs. That is --

11 MR. LEVIN: Those are -- those are Batesed 314 to
12 322, just for reference.

13 THE WITNESS: Thank you.

14 A. Those are the text messages that we received from
15 SPD in response to our request for text messages between
16 Childs and SPD.

17 So when I got those and we produced them to
18 you, my understanding -- and I put it in writing to you
19 guys, probably multiple times because you kept asking -- my
20 understanding, until much more recently, is that that was
21 it. Those were all of the texts between Sam DeJesus and
22 Robert Childs.

23 Q. (BY MS. WELLMAN) Okay. This e-mail on July 19
24 that you produced, it looks like you redacted whatever you
25 said to prompt a response from Detective DeJesus.

1 Am I correct -- so you asked Detective
2 DeJesus about the retention of text -- any policies for the
3 retention of text messages; is that right?

4 A. There was a time, as you're well aware, that we
5 were kind of going back and forth with either e-mails or
6 letters in terms of your making discovery inquires regarding
7 the issue of text messages. And during that time both of
8 the sides, both of us, were exploring avenues to see if we
9 could recover the texts that we learned were missing.

10 I believe this e-mail that we produced was
11 sort of a by-product of our exchange, meaning yours and
12 mine, where I was following up on a question of, you know,
13 is there a retention policy, the carrier's policy, SPD's
14 policy. This was all in that time frame where we were
15 trying to gather this information. So that is what caused
16 this communication to take place.

17 Q. Is -- did -- so it looks like you did ask
18 Detective DeJesus about a policy. Did you ask anyone else
19 in his unit about a policy regarding the retention of
20 evidence?

21 MR. WESTINGHOUSE: Just, did you ask anybody else?

22 A. Yes.

23 Q. (BY MS. WELLMAN) Who else did you did?

24 A. Erik Allen.

25 Q. Okay. And what did he say?

1 MR. WESTINGHOUSE: Well, let's ask Mr. Allen what
2 he said. But the issue is, we asked.

3 A. In our -- you have, in our discovery letters, the
4 answer to that question. We --

5 Q. (BY MS. WELLMAN) Yeah. It's not clear where that
6 answer came from, so that it's Sergeant Allen, helps.

7 It looks like, also from this e-mail, that
8 Detective DeJesus did not write any reports about his phone
9 calls with Childs. Am I reading that correctly?

10 A. I'm not going to interpret what he meant by his
11 e-mail for you. You'll have to ask him what he meant by his
12 e-mail.

13 Q. To your knowledge, did he write any reports about
14 any telephone communications with Childs?

15 MR. WESTINGHOUSE: Did Mr. DeJesus tell you
16 specifically that he prepared any such reports?

17 A. We have asked, before, for all SPD reports
18 concerning this case. My understanding is that we have them
19 all. And then, you have them all.

20 Q. (BY MS. WELLMAN) So if we don't have any reports
21 on telephone communications between DeJesus and Childs, is
22 your position that the communication didn't happen?

23 MR. WESTINGHOUSE: No. I think that -- again,
24 we're going into discovery now. I think the answer was, you
25 have everything that we have. We're not going to speculate

1 on whether there were conversations that did not make it to
2 reports.

3 Q. (BY MS. WELLMAN) Okay. It looks like you also
4 were going to meet with Detective DeJesus shortly after this
5 e-mail; is that correct?

6 A. We did meet with him shortly after this e-mail.

7 Q. Okay. And did you do a 302 of that meeting, or
8 are we only going to expect your letter about that,
9 summarizing that meeting? We have a letter. We do not have
10 a 302. Is there a 302 on that meeting?

11 A. No. There's not a 302 of a meeting between the
12 investigative team.

13 Q. Okay. Do you recall who else was at that meeting?

14 A. Can you show me the letter that I wrote you?

15 Q. I just have the --

16 A. No, you have the letter. It describes a July 24
17 meeting. We looked at it earlier today.

18 Q. Yeah. Did I have it, or did Erik have it?

19 A. Or I can try to find it.

20 MR. WESTINGHOUSE: I think you had it out here
21 earlier.

22 A. I'm pretty sure it's one of your exhibits that's
23 attached here.

24 Q. (BY MS. WELLMAN) Oh, this July 20?

25 MR. WESTINGHOUSE: Twenty-fourth.

1 Q. (BY MS. WELLMAN) It would have been when you --

2 A. Here it is.

3 Q. -- summarized --

4 A. I've got it. It's Exhibit --

5 Q. Page 80?

6 A. -- V of your -- one of your briefs. Page 80 of
7 your exhibits. It's a letter that I wrote -- I think I
8 wrote it -- yeah. I wrote this letter on July 25
9 concerning, among other things, a meeting that we had with
10 Sam DeJesus on July 24, the day before.

11 So according to this letter it was myself,
12 Mike Dion, and Ethan Via and Sam DeJesus.

13 MR. WESTINGHOUSE: What's the question?

14 A. I don't --

15 THE WITNESS: The question was who was there.

16 A. And I don't recall off the top of my head anyone
17 else being there other than those people.

18 Q. (BY MS. WELLMAN) Okay. So going back to this, I
19 underlined a part of this text message where he says --

20 MR. WESTINGHOUSE: He, DeJesus?

21 Q. (BY MS. WELLMAN) He, being DeJesus.

22 -- the whole reason for giving Childs a
23 specific phone to communicate with Latif only was to
24 mitigate the whole texting issue.

25 What does that mean to you?

1 MR. WESTINGHOUSE: Well, what it means to
2 Mr. Greenberg isn't important. It's what Mr. DeJesus meant,
3 and you can ask him.

4 Q. (BY MS. WELLMAN) What -- did you follow-up with
5 Detective DeJesus, at your meeting with him, about that?

6 A. Did I ask Sam DeJesus what he meant by these words
7 in this e-mail?

8 Q. Yes.

9 A. No. But we certainly had a lengthy discussion
10 about the text message issue during which he provided all
11 sorts of information about his thought process, which we
12 made sure to document for you in this letter that we were
13 just talking about it. But I did not put this e-mail in
14 front of him and ask what he meant by those specific words.

15 For example, in the letter, this July 25
16 letter I wrote this sentence: Detective DeJesus understood
17 only the need to preserve text messages between Childs and
18 the subjects of the investigation.

19 That's something that he told us during that
20 meeting and we documented in this letter.

21 Q. And he didn't repeat this -- this claim in your
22 meeting, to your recollection?

23 MR. WESTINGHOUSE: What is the claim you're
24 referencing?

25 Q. (BY MS. WELLMAN) That -- the same one I just

1 read. The whole reason for giving -- what I believed at the
2 time, the whole reason for giving Child's a specific phone
3 to communicate with Latif only was to mitigate this whole
4 texting issue.

5 A. I'm just reading this letter for a second.

6 Q. Okay. That's fine.

7 A. Can I see that e-mail, please?

8 Q. Sure.

9 A. To me, the language that you underlined in his
10 e-mail that says, quote, The whole reason for giving Childs
11 a specific phone to communicate with Latif only was to
12 mitigate the whole -- this whole texting issue, is related
13 to the statements that Sam DeJesus made to us on July 24th,
14 specifically that he did not recall being told to save text
15 messages between himself and Childs but understood the need
16 to preserve text messages between Childs and subjects of the
17 investigation. I think those are related to each other.

18 So I mean, this language in this mail was not
19 discussed during our meeting, but I believe his explanation
20 for what he understood to preserve is related to his e-mail.

21 Q. Okay. Okay. Did you ever discuss with Detective
22 DeJesus what's considered logistical versus substantive?

23 A. Yes.

24 Q. And what did you say in that regard?

25 A. Well, that would have taken place during the same

1 discussion that we had on July 24.

2 Q. For the first time? That would be a -- that was
3 the first time you've discussed whether something was
4 substantive or logistical?

5 A. Yes.

6 Q. And your meeting June 6 at 10 a.m., did you --
7 when you told everyone to preserve their text messages, did
8 you carve out an exception for logistical?

9 A. No.

10 Q. Okay. Well, how would you define logistical?

11 A. Okay. Well, this is not --

12 Q. Well, what do you consider logistical?

13 A. Let me be clear. I did not carve out, on June 6,
14 nor have I ever carved that out.

15 Q. No. I understand. I didn't mean to suggest that.

16 A. Okay.

17 Q. I understand your answer. I trust that I'm -- I
18 guess my question is -- well, let me ask it a different way.

19 Do you consider requests for rewards by
20 Childs a substantive communication?

21 MR. WESTINGHOUSE: Are you -- if you're asking the
22 witness what he told Mr. Childs in terms of rewards, that's
23 fine. If you're asking what he considers, it's not
24 relevant.

25 MS. WELLMAN: I disagree, but -- no. I'm asking,

1 would you consider --

2 MR. WESTINGHOUSE: You can ask him what he told --
3 no. That's -- he's not going to tell you what he would
4 consider, his mental impressions. He can tell you what he
5 told Mr. Childs.

6 Q. (BY MS. WELLMAN) Did you tell Mr. Childs anything
7 about...?

8 A. No. I never had any conversations with Mr. Childs
9 about text messages.

10 Q. That's what I thought.

11 How about Detective DeJesus? Did you ever
12 discuss with him -- I think, but you've already said --
13 other than the meeting that's summarized in your letter of
14 July 25, what you consider substantive versus logistical?

15 A. The only time I've talked about that issue with
16 Sam DeJesus was on July 24. And I think -- well, I'm
17 rereading this letter. I think it accurately describes the
18 conversation. I don't have a lot to add to it.

19 Q. Okay. So I think in the August 3 letter that's
20 the focus of this, you -- we've already touched on this, but
21 you mentioned that there were other instances that you had
22 to tell -- whether it was you or your agents or Mr. Dion, to
23 tell Detective DeJesus to preserve his communications. I
24 think you gave the time period between June 6 and June 22.

25 A. Jennifer, let me just -- I don't think you

1 accurately characterized what I've said in the preface to
2 your question. So just -- you might want to start --

3 MR. WESTINGHOUSE: You referred to an August 3 --

4 Q. (BY MS. WELLMAN) Your August 3 --

5 A. Okay. The August 3 letter.

6 Q. Is the focus of this meeting today, right? Your
7 Paragraph 4.

8 A. I've got it.

9 Q. And you say, We believe there were other instances
10 during the time period of the investigation when the need to
11 preserve text messages was raised with the investigators,
12 correct?

13 A. Yes.

14 Q. Okay. And you've already -- we've already kind of
15 asked you a ton of questions regarding that, in terms of how
16 many instances you recall and that nature. And your clear
17 memory is that you definitely discussed it at the June 6,
18 10 a.m. meeting, right?

19 A. Correct. I made the comment that I've told you
20 about.

21 Q. Right.

22 A. It wasn't a discussion, a give or take on that
23 topic. But I clearly made the comment that I've described
24 for you at that meeting.

25 Q. Okay. And when we -- when you and I and Mr. Levin

1 talked a while back, I asked you, Why did you have to tell
2 Detective DeJesus so many times?

3 And do you recall, you said you had an
4 answer, but you wanted to think about it?

5 A. No. What I -- I -- I don't agree with that.

6 Q. Okay.

7 A. I do recall --

8 MR. WESTINGHOUSE: We're not going to be answering
9 why Mr. Greenberg thinks the detective needed to be told
10 many times. It doesn't matter. It's not relevant why he
11 thinks that.

12 A. I recall the conversation you're referring to.

13 Q. (BY MS. WELLMAN) Yeah.

14 A. And I -- my recollection is that you asked me why
15 did I make the comment? Why did I tell the agents --

16 Q. Okay.

17 A. -- save your texts and e-mails?

18 And I told you that I had an answer to that,
19 and I -- but I didn't provide the answer to you at that
20 time.

21 Q. Right. Right.

22 A. I have told you the answer today.

23 Q. I agree.

24 A. Which was that we had --

25 MR. WESTINGHOUSE: Suarez.

1 A. -- the Suarez --

2 MR. WESTINGHOUSE: The training.

3 A. -- and the training. So this was on my mind which
4 prompted me to kind of have it in the front of my mind to
5 make that comment.

6 Q. (BY MS. WELLMAN) Okay. So -- so I --

7 A. I never recall telling you that I, quote, had to
8 tell the investigators so many times to save that. That is
9 not --

10 Q. No. My -- my question to you was, why did
11 Detective DeJesus have to be repeatedly told by a variety of
12 people to preserve his text messages?

13 MR. WESTINGHOUSE: And we're not going to answer
14 that question. It calls for speculation by the witness. He
15 doesn't know. He can't know why another person needed to be
16 told once or ten times, if he did.

17 MS. WELLMAN: Okay.

18

19 E X A M I N A T I O N

20 BY MR. LEVIN:

21 Q. I have one other question. You know, maybe I'm --
22 maybe I'm confusing Suarez with another case.

23 My reading of Suarez was that was a case in
24 which the FBI had failed to preserve the text messages
25 despite there being a litigation hold and despite the

1 assistant on the case informing them that it had been
2 requested by --

3 A. Yeah. I think that's not an accurate description
4 of Suarez. But -- but I'll tell you what I was thinking
5 because that seems to be the relevant point. I don't want
6 to get into a legal discussion on Suarez here.

7 Q. Yeah.

8 A. I didn't have all the details of that case in my
9 mind at the time. You know, I remember when that case came
10 out thinking, Wow, you know, text messages between agents
11 and informants. What a nightmare.

12 We had training on it. And we learned at
13 this training it wasn't just Suarez. There were other
14 cases. This was a new frontier in discovery. It was a
15 pitfall that was being highlighted for us to be aware of.

16 So when I sat at the June 6 meeting, whatever
17 triggered in my mind that there were texts going on or
18 potentially going on caused me to say, Save them.

19 Q. And were you worried at the point in which you
20 said that, that if you didn't say this, that they would
21 disappear?

22 MR. WESTINGHOUSE: I'm not -- we're not going to
23 answer that. It doesn't matter whether he was worried or
24 not. He said it.

25 Q. (BY MR. LEVIN) Well, I guess, did that concern

1 inform the way in which you said it? Would you -- would you
2 describe yourself as having been emphatic or passive or, I
3 mean, how was it that it was told?

4 MR. WESTINGHOUSE: If you can characterize how --
5 your voice tone.

6 A. I mean, honestly, it was -- it sticks in my mind
7 because I said it and because it was a legal issue that was
8 in the front of my mind at that time. But there were so
9 many things being talked about at that meeting. Everyone
10 else at that meeting, I think, was an agent or law
11 enforcement officer. There were no other prosecutors there.

12 And with everything that was going on with
13 this case, with the plot that was being described, with
14 it -- the safety concerns that were raised in -- with a plot
15 like this, with the informant handling issues that would
16 have to be dealt with by the investigators, with how
17 fast-moving this was, I don't know that the way I said it or
18 what I said would have stood out in any particular way
19 vis-à-vis anything else that was said by anyone else.

20 MS. WELLMAN: What do you mean by handling issues
21 with the informant?

22 THE WITNESS: I -- just them talking about --
23 I'm -- he signed up as an SPD informant. They were talking
24 about wanting to meet him with the FBI. Just -- I guess
25 what I'm saying is the agents in the room had so much that

1 was being discussed and had so much that had suddenly fallen
2 on their plates in terms of an investigation, safety
3 concerns, mitigating against risks that were presented, that
4 the comment that I made in the context of that kind of
5 meeting, it was -- I mean, I said it. I clearly spoke up
6 and, you know, I didn't whisper it. But you're saying was
7 it emphatic? I just said it in a normal voice. People
8 seemed to be listening to me. And then we moved on to a
9 variety of other topics.

10 Q. (BY MR. LEVIN) Why do you say that people seemed
11 to be listening to you?

12 A. I just recall that when I was speaking, it wasn't
13 like all 12 other people in the room were talking over me.
14 You know, I can't tell you for sure whether -- at the moment
15 I said that comment, whether someone was whispering to their
16 guy next to them or whether someone was checking their
17 phone.

18 I mean, at a long meeting like that at the
19 time like that, that was undoubtedly going on throughout the
20 meeting. But when I said what I said about the texts and
21 when I said other comments that I made in general, at that
22 moment, people were listening.

23 MS. WELLMAN: Debra, do you have any additional
24 questions?

25 MS. MALCOLM: No.

1 MR. WESTINGHOUSE: Would you mind if I ask a
2 couple of follow-up questions.

3 MS. WELLMAN: Go ahead.
4

5 E X A M I N A T I O N

6 BY MR. WESTINGHOUSE:

7 Q. On June 6, I believe you stated that the meeting
8 length was approximately 90 minutes?

9 A. Yes.

10 Q. Approximately what term was spent talking about
11 the text messaging question by you?

12 A. Probably 15, 20 seconds. I mean, enough time for
13 me to say what I said. And like I said, there wasn't a lot
14 of follow up or discussion following it.

15 Q. Okay. And you said that there were many people
16 around the table. In the course of this meeting, did
17 everyone remain around the table constantly throughout the
18 90 minutes, or did people, from time to time, get up to,
19 perhaps, take care of some other matter briefly and step
20 back to the table.

21 A. I don't have a specific recollection of that. But
22 having been through many meetings of this ilk, I would
23 expect that people were in and out.

24 But let me -- and let me say one other thing.
25 You triggered something else in my mind which is where I was

1 seated and where Sam DeJesus was seated and I can tell you
2 where Ethan Via was seated. I don't remember where everyone
3 else was.

4 We were at a long, rectangular conference
5 table bigger than this one, but similar in shape.

6 Q. And for purposes of this discussion, this table is
7 approximately 4 feet wide and 12 feet long. Is that a rough
8 approximation?

9 MR. LEVIN: Sure.

10 A. And I was sitting in a position very similar to
11 where Jennifer is right now. So I was not at the head of
12 the table. I was on the -- one of the sides, but towards
13 one end of the table.

14 Ethan Via was sitting directly across from
15 me. And Sam DeJesus was at the far head of the table. He
16 was sitting at the head of the table on the other side -- on
17 the other end of the table from where I was sitting.

18 Q. (BY MR. WESTINGHOUSE) And with respect to
19 Mr. DeJesus specifically, do you know whether he was at that
20 seat when you made the statements about the text messaging?

21 A. I believe he was seated there when I said that.

22 Q. Do you know if he was listening to you; looking at
23 his BlackBerry, if he has a BlackBerry; taking care of some
24 other business; or any other thing he might have been doing?

25 A. I have no recollection of that.

1 Q. Did either Mr. DeJesus or anyone else in the room
2 verbally acknowledge your statement about preserving text
3 messages?

4 A. I don't have a specific recollection of anyone
5 saying something specific or doing anything specific,
6 acknowledging what I said, but --

7 Q. You said earlier --

8 A. I mean, if I --

9 Q. -- there were no objections?

10 A. If I -- yeah, there were no objections.

11 And if I had said something and it was
12 apparent to me that it fell on deaf ears because everyone
13 was, you know, looking at their BlackBerry or talking about
14 something else, I would have repeated it. So I mean, my
15 impression is that most of the people there heard what I
16 said. Whether any particular person was whispering to
17 someone or busy reading something else and missed it, I
18 don't know.

19 MR. WESTINGHOUSE: That's all I have.

20

21 E X A M I N A T I O N

22 BY MS. WELLMAN:

23 Q. But it was an important enough issue to you that
24 if someone didn't hear it at the other end of the table, you
25 would have repeated it.

1 MR. WESTINGHOUSE: If it was obvious to you.

2 A. Well, no. I mean, if I saw one person looking at
3 their BlackBerry when I was speaking, I don't know that I
4 would have repeated it.

5 Q. (BY MS. WELLMAN) Right.

6 A. And I wasn't saying it to one particular person,
7 so I wasn't -- you know, if I was addressing you, Jennifer,
8 individually --

9 Q. Right.

10 A. -- and I looked at you and you weren't listening
11 to me, I mean, I would repeat it to you.

12 Q. Right.

13 A. So like I said, if I -- if it had generally gone
14 unheard and that was apparent to me, I would have repeated
15 it. But I wasn't scouring the table to make sure every
16 single individual there was listening to what I said.

17

18 E X A M I N A T I O N

19 BY MR. LEVIN:

20 Q. Well, I mean, I understand that you wanted
21 everyone to hear what you had to say, but when you're
22 talking -- when you're giving an instruction to preserve
23 text messages with the -- Robert Childs, as well as those
24 communications between Robert Childs and the targets of
25 investigation, isn't part of you thinking that you're really

1 talking to the guy who's handling Robert Childs, DeJesus,
2 and the guy at -- the lead investigator for the FBI, Ethan
3 Via?

4 MR. WESTINGHOUSE: Well, if your question is, was
5 the question -- the text message statements directed to the
6 person handling Mr. Childs, you can ask that question, if
7 that's what your question was.

8 Q. (BY MR. LEVIN) I'm just wondering what you
9 were -- what you were thinking when you were giving that
10 instruction.

11 MR. WESTINGHOUSE: Well, we've already talked
12 about the fact he was thinking about the Suarez opinion and
13 the training.

14 Q. (BY MR. LEVIN) No. I mean, who were you thinking
15 about in terms of who was supposed to be -- who would be
16 preserving those text messages and communications?

17 MR. WESTINGHOUSE: Not relevant. We're going to
18 move on.

19

20 E X A M I N A T I O N

21 BY MS. WELLMAN:

22 Q. Well, is it -- is it -- all right.

23 A. I've answered that for you already during this
24 interview.

25 Q. You've answered who you thought he would have

1 communicated with text communications.

2 A. I've answered that earlier in this interview, who
3 I was under the impression was communicating with Robert
4 Childs. You asked me that. I answered that.

5 Q. And your understanding is that the people that
6 were communicating with Childs understood you expected them
7 to preserve evidence?

8 MR. WESTINGHOUSE: I don't think he said that. I
9 don't think that was his testimony.

10 Q. Whether at the June 6 meeting or at another time,
11 did you expect that the law enforcement agents were
12 preserving their evidence?

13 MR. WESTINGHOUSE: What he can answer is what he's
14 told.

15

16 E X A M I N A T I O N

17 BY MR. LEVIN:

18 Q. Well, maybe this is -- maybe this is what I'm
19 getting at. Mr. Westinghouse asked you whether -- when you
20 were giving out the instruction about preserving text
21 messages and e-mails, he asked you whether at that time
22 Samuel DeJesus was checking his BlackBerry or was out of the
23 room or was not paying attention. And you said, I believe,
24 that you don't recall any of that being the case.

25 A. I don't have a specific recollection of what Sam

1 DeJesus was doing at that moment, no.

2 Q. Were you in any way focused on Sam DeJesus during
3 that moment?

4 MR. WESTINGHOUSE: If you recall.

5 A. Not exclusively, for sure. I don't recall who I
6 was focused on at the moment I said that. I think the
7 target audience for the comment were the investigators and
8 their supervisors, who were both present -- the SPD
9 supervisor and the FBI supervisor were there -- who would be
10 handling the investigation.

11 MR. LEVIN: All right.

12 MR. WESTINGHOUSE: Shall we take a break for a
13 couple minutes?

14 MR. LEVIN: Sure.

15 MS. WELLMAN: Sure.

16 (Interview concluded at 3:04 P.M.)

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C E R T I F I C A T E

I, the undersigned officer of the Court and Washington Certified Court Reporter, hereby certify that the foregoing deposition upon oral examination was taken stenographically before me and transcribed under my direction;

That the transcript of the interview is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions, and exceptions of counsel made and taken at the time of the foregoing examination;

That I am neither attorney for nor a relative or employee of any of the parties to the action; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of , 2012.

Kristin M. Vickery
Certified Court Reporter, 3125